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David W. Koenig

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SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
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3 MONTHS

01/04/2007

ELECTRONIC

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uspatents@senniger.com

DETAILED ACTION

Response to Arguments

Applicant's arguments filed October 10, 2006 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of the claims under 35 U.S.C. 103: Applicant argues that there is no motivation to apply the solution taught by Howard to a wet wipe. Examiner disagrees. Howard clearly teaches that any of the solutions are intended for use with a sanitary wipe, including wet wipes. This constitutes proper motivation. Applicant argues that there is no teaching by Howard of 100% Yucca Schidigera powder. Howard teaches yucca extract which is widely used in powder form, therefore, although Howard does not explicitly teach that the extract is in powder form, Examiner argues that the teaching is implicit. Applicant argues that there are numerous species of yucca, however applicant has not sufficiently established that any of these species could be the species referred to by Howard. Examiner has attached a reference that states the known use of yucca schidigera powder in health and cosmetic products. A wet wipe is a cosmetic product. Proof of the benefit of a structural feature or method step is not necessary for establishing obviousness. Applicant argues that because applicant does not believe that Howard teaches a wet wipe comprising yucca extract, that Howard therefore does not teach a wet wipe that could reduce the level of gram-negative bacteria. It would appear that applicant is associating the presence of yucca extract with the benefit of reducing Gram negative bacteria, however applicant continues on to correctly acknowledge that there "is nothing to suggest that Yucca extract has any antimicrobial properties." Examiner reminds applicant that the claim does not require that the yucca extract be capable of reducing Gram-negative bacteria, but rather the wet wipe itself be capable of

reducing such bacteria. The solution taught by Howard, as stated in the Office action on page 4 with respect to claims 19 and 23, also contains catechin, which does reduce the level of Gram-negative bacteria.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on July 17, 2006 and October 9, 2006 were filed after the mailing date of the final Office Action on March 9, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5 and 7-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al (U.S. Patent No. 6,552,171).

With respect to **Claims 1,10**: Howard teaches a hydrolyzed jojoba protein solution for use in skin lotions, creams, and sanitizing wipes (Col. 3, lines 4,5,11,12). Howard teaches compositions for hand lotion (Col. 8, Table 6) and hand cream (Col. 9, Table 7) comprising said jojoba protein solution, as well as Yucca extract and green tea extract, which contains catechin, considered here as a broad spectrum antimicrobial. Howard does not explicitly teach a wipe substrate, however since Howard teaches that said solution is intended for use on a sanitizing wipe, it would be obvious to one of ordinary skill in the art to apply said solution to a sanitizing wipe substrate with a reasonable expectation of success.

With respect to **Claims 2,11,20,24**: Howard does not explicitly teach 100% Yucca Schidigera powder, however yucca extract as used in the food and cosmetic industries is widely known to be in pure powder form from the Yucca Schidigera plant. Therefore it would be obvious to one of ordinary skill in the art to use 100% Yucca Schidigera powder as is taught implicitly by Howard.

With respect to **Claims 3,4**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (Col. 8, Table 6).

With respect to **Claim 5**: Howard teaches that the hand lotion and hand cream solutions also contain green tea extract (Col. 8, Table 6 and Col. 9, Table 7) whose active ingredient is catechin, which has widely known antioxidant and antimicrobial uses.

With respect to **Claims 7,8**: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6, Col. 9, Table 7) Therefore the catechin is present in at most 0.05% by weight of the solution.

With respect to **Claim 9**: Howard teaches that the hand lotion and hand cream solutions are also comprised of goldenrod extract, used as an astringent in both solutions (Col. 8, Table 6 and Col. 9, Table 7).

With respect to **Claims 12,13**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (see Col. 8, Table 6).

With respect to **Claims 14,15**: Howard teaches that the hand lotion and hand cream solutions also contain green tea extract whose active ingredient is catechin, which has widely known antioxidant and antimicrobial uses.

With respect to **Claims 16,17**: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6 and Col. 9, Table 7) Therefore the catechin is present in at most 0.05% by weight of the solution.

With respect to **Claim 18**: Howard teaches that the hand lotion and hand cream solutions are also comprised of goldenrod extract, used as an astringent in both solutions (Col. 8, Table 6 and Col. 9, Table 7).

With respect to **Claims 19,23**: With respect to the step of contacting the skin with a wet wipe, Howard teaches a jojoba solution (liquid formulation) comprising yucca extract to be used as hand lotion or hand cream. (Col. 9, Table 7) With respect to claim 23, Howard also teaches that said formulation comprises catechin, a natural broad spectrum antimicrobial derived from green tea leaves. Howard does not explicitly teach a wet wipe comprising a wipe substrate. However, since Howard teaches that said solution is intended for use on a sanitizing wipe, it would be obvious to one of ordinary skill in the art to apply said solution to a sanitizing wipe substrate that is capable of reducing the growth rate of Gram negative bacteria and yeast on the surface of the

skin while not substantially affecting the growth rate of Gram positive bacteria. Howard also does not explicitly teach contacting the skin with said substrate and said formulation, however, Howard teaches that the solutions are intended for use in application to the surface of a user's skin and that such solutions are intended for use on a sanitizing wipe, therefore it would be obvious to one of ordinary skill in the art to contact a user's skin with a wet wipe having a wipe substrate with the liquid formulation taught by Howard disposed thereon, as such formulation is intended for use on a sanitizing wipe and imparts health benefits to the skin.

With respect to **Claims 21,22**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (see Col. 8, Table 6 and Col. 9, Table 7).

With respect to **Claims 25,26**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (see Col. 8, Table 6).

With respect to **Claims 27,28**: Howard teaches that the hand lotion and hand cream solutions also contain green tea extract whose active ingredient is catechin, which has widely known antioxidant and antimicrobial uses. With respect to Claims 29 and 30: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6 and Col. 9, Table 7) Therefore the catechin is present in at most 0.05% by weight of the solution.

With respect to **Claims 29,30**: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6 and Col. 9, Table 7). Therefore the catechin is present in at most 0.05% by weight of the solution.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al in view of Sato (Japanese Patent No. 2001011496).

With respect to **Claim 6**: Howard does not teach an antimicrobial that conforms to any of the items in the group set forth in claim 6. Sato teaches a sterilization detergent that is comprised of ethanol (see Abstract). Alcohols are known in the art for their antimicrobial uses, therefore it would be obvious to modify the jojoba protein solution taught by Howard to contain ethanol, as it would impart additional antimicrobial function.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

December 18, 2006



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER